

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201805943	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/14/2018 11:50 PM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 1/14/2020	EO SOL 1/14/2020	
Date/Time CV Reported Sun, 07/15/2018 2:49 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/23/2018 10:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Fabio Nunez	872	925839	034 PCT
2. Officers			
3. POM Robert Velsor	1374	955634	034 PCT
4. An officer			
5. POF Shanee Pierce	09299	953252	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Callan	16363	954592	034 PCT
2. SGT Hekmatulla Mukhtarzada	03383	949517	034 PCT
3. POM Michael Levy	29982	954059	034 PCT
4. POM Kevin McCormack	29463	955159	034 PCT
5. POM Daniel Martinucci	20408	955140	034 PCT
6. POM Christophe Siciliano	13510	957163	034 PCT
7. POM James Ludvick	01880	959772	034 PCT
8. POM Juan Orozco	03193	963674	034 PCT
9. POM Kevin Falconer	2149	954790	034 PCT
10. POM Paul Montali	13001	942543	034 PCT
11. POM Matthew Robayo	19758	959138	034 PCT
12. POM Nay Htoo	09240	953974	034 PCT
13. POF Angela Polancobrito	04956	939240	034 PCT
14. POM James Kane	15768	957724	034 PCT
15. POM Emilio Pichardo	02099	934062	034 PCT
16. POM Giancarlo Alia	02843	927847	034 PCT
17. POM Michael Quinones	29678	953282	034 PCT
18. DTS Edwin Rodriguez	6696	946173	034 PCT
19. POM Marcos Gonzalez	27220	940204	034 PCT
20. POM Josue Torres	21771	960031	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS Fabio Nunez	Force: Detective Fabio Nunez used a chokehold against § 87(2)(b)	
B.DTS Fabio Nunez	Force: Detective Fabio Nunez restricted § 87(2)(b)'s breathing.	
C.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
D.DTS Fabio Nunez	Force: Detective Fabio Nunez used physical force against § 87(2)(b)	
E.POF Shanee Pierce	Force: Police Officer Shanee Pierce used physical force against § 87(2)(b)	
F.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
G.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
H.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
I.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
J.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
K.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
L.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
M.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
N.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
O.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
P.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
Q.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
R.DTS Fabio Nunez	Force: Detective Fabio Nunez used a taser on § 87(2)(b)	
S.DTS Fabio Nunez	Force: Detective Fabio Nunez used a second chokehold against § 87(2)(b)	
T. Officers	Force: Officers used physical force against § 87(2)(b)	
U.POM Robert Velsor	Force: Police Officer Robert Velsor used physical force against § 87(2)(b)	
V. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

## Case Summary

On July 23, 2018, § 87(2)(b) filed the following case with the CCRB's intake unit.

On July 14, 2018, at approximately 11:50 pm, while on the sidewalk outside § 87(2)(b) in Manhattan, § 87(2)(b) and his friends were approached by Det. Fabio Nunez and PO Shanee Pierce (both of the 34th Precinct), to be summonsed for a noise violation. After a series of exchanges with the officers, § 87(2)(b) was arrested by Det. Nunez, who attempted to handcuff him against the side of a vehicle. While doing so, Det. Nunez placed § 87(2)(b) in a chokehold, causing his breathing to be restricted (**Allegations A, B – Force: § 87(2)(g)**). Det. Nunez then deployed taser prongs on § 87(2)(b)'s back (**Allegation C – Force: § 87(2)(g)**). Det. Nunez and PO Pierce then struggled with § 87(2)(b) over the next several minutes (**Allegation D – Force: § 87(2)(g)**; **Allegation E – Force: § 87(2)(g)**). During this time, Det. Nunez repeatedly tased § 87(2)(b) in drive stun mode (**Allegation F through Allegation R – Force: § 87(2)(g)**). Det. Nunez also allegedly used a second chokehold on § 87(2)(b) while in the rear. (**Allegation S – Force: § 87(2)(g)**). Det. Nunez eventually took § 87(2)(b) to the ground (subsumed - Allegation D) as several backup officers then arrived to further restrain him (**Allegation T - Force: § 87(2)(g)**). At around the same time, PO Robert Velsor (also of the 34<sup>th</sup> Precinct) pushed § 87(2)(b)'s girlfriend, against a vehicle (**Allegation U – Force: § 87(2)(g)**). An unidentified officer also used profanity against § 87(2)(b) (**Allegation V – Discourtesy: § 87(2)(g)**).

The incident was captured on body worn cameras and on surveillance and civilian cell phone footage. (BR04 – BR10, relevant segments embedded on page 3) Due to widespread press coverage, this case was marked as sensitive. (BR01-BR02)

## Findings and Recommendations

**Allegation A – Force: Detective Fabio Nunez used a chokehold against § 87(2)(b)**

**Allegation B – Force: Detective Fabio Nunez restricted § 87(2)(b)'s breathing.**

**Allegation C – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation D – Force: Detective Fabio Nunez used physical force against § 87(2)(b)**

**Allegation E – Force: Police Officer Shanee Pierce used physical force against § 87(2)(b)**

**Allegation F – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation G – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation H – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation I – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation J – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation K – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation L – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation M – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation N – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation O – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation P – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation Q – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

**Allegation R – Force: Detective Fabio Nunez used a taser on § 87(2)(b)**

It is undisputed that Det. Fabio Nunez used physical force on § 87(2)(b) and that he deployed his taser on him on repeatedly. Whether he also used a chokehold is in dispute.

Regarding the sequence of the encounter and its surrounding circumstances, the comprehensive video footage of the incident – from two surveillance cameras, the involved officers' body worn cameras, and a civilian cell phone recording – established the following principal facts. (BR04 – BR10)



video1.mp4

As video 1 above shows, on the night of July 14, 2018, § 87(2)(b) was on the sidewalk outside § 87(2)(b) with girlfriend § 87(2)(b) and friend § 87(2)(b) an employee of § 87(2)(b). The group was loosely gathered around a knee-high speaker playing music, connected to a power source within the auto-shop lot. At 11:42 pm, Det. Nunez and his partner PO Shanee Pierce approached and instructed the group to turn the music off. They complied. Over the next five minutes, Det. Nunez attempted to obtain identification so he could write a noise violation summons. Det. Nunez first asked § 87(2)(b) who said he had no identification on him. Det. Nunez then announced that he needed identification from the proprietor of the auto-shop, but no one came forward. What followed was an increasingly vocal series of exchanges between Det. Nunez and § 87(2)(b) and § 87(2)(b) which lead to the speaker being confiscated. Det. Nunez then returned to § 87(2)(b) instructed him to “turn around,” and repeatedly told him that he wanted his ID specifically. (BR04 – BR10)



video2.mp4

Video 2 above shows what ensued: § 87(2)(b) steps in and says that the speaker is hers; Det. Nunez maintains that he wants § 87(2)(b)'s identification; when § 87(2)(b) turns to walk back into the auto-shop lot, Det. Nunez follows and seizes him by the nape of his neck; holding § 87(2)(b) against a vehicle, Det. Nunez then attempts to gain control of § 87(2)(b)'s hands to handcuff him; at 23:49:00, his taser now drawn, Det. Nunez yells "I will dry stun you!" as § 87(2)(b) turns to partially face him; between 23:49:27 and 23:49:50, Det. Nunez hooks his right forearm around § 87(2)(b)'s neck, and appears to be in contact with his throat for the next 23 seconds; at 23:49:55, Det. Nunez discharges taser prongs against § 87(2)(b)'s upper left back. While both officers' BWCs are dislodged soon after, video 3 below shows the action as it moves to the rear of the lot. (BR04 – BR10)



video3.mp4

§ 87(2)(b) stated that he did not know he was the focus of Det. Nunez's attention at the time he walked away from him. § 87(2)(g)

As to what happened next, § 87(2)(b) stated: that Det. Nunez grabbed him from behind without warning and pushed him against the vehicle without saying what he was doing; that Det. Nunez then wrapped his right arm around his throat while pulling him backwards; that the resulting pressure caused some restriction to his breathing; that Det. Nunez then announced, without verbalizing any other commands, that he would tase him, and then discharged prongs against his back. § 87(2)(b) was able to pull the prongs out of his body immediately, but Det. Nunez – upon pushing him further into the lot and against another vehicle in the rear – proceeded to tase him repeatedly, the weapon making contact with his body a total of 14 times. § 87(2)(b) denied attempting to fight with Det. Nunez at any point in time and said he did not intend to resist arrest. (BR04)

§ 87(2)(b) and § 87(2)(b) declined to provide statements.

According to Det. Nunez, noise violation enforcement was a precinct-wide condition at the time, due to 311 complaints regarding loud music – whether emitted by nightclubs or by individuals using portable speakers outdoors. While it was standard practice to summons the liable business, Det. Nunez could not do so in this case because the proprietor of § 87(2)(b) had not been present. Det. Nunez stated that he was initially prepared to accept identification from any member of § 87(2)(b)'s group so he could write a summons returnable to the Office of Administrative Trials and Hearings (OATH). However, no one stepped forward as the owner of the speaker, until § 87(2)(b) did once the speaker was confiscated. Det. Nunez tried to reason with § 87(2)(b) repeatedly instructing him to show him identification. But § 87(2)(b) refused and grew increasingly agitated; speaking loudly and gesturing with his hands, he kept saying that he did not need to comply. Det. Nunez thus eventually decided to place § 87(2)(b) under arrest for disorderly conduct. While § 87(2)(b) had intervened to claim ownership before this point, she had not yet provided identification – and given that he had already moved on to dealing with § 87(2)(b)'s disorderliness, it was “too late” for her to do so. (BR14)

When § 87(2)(b) walked away instead of turning around, Det. Nunez placed him against a parked vehicle and repeatedly ordered him to give him his hands. But § 87(2)(b) flailed his arms around and pushed back against him. Det. Nunez passed his handcuffs to PO Pierce at around this time, but she was only able to handcuff one of his wrists. Unable to overcome his active resistance, Det. Nunez then pulled his taser out with his left hand and wrapped his right forearm around § 87(2)(b)'s upper right shoulder, a “technique” to gain leverage over § 87(2)(b)'s rotating torso. In doing so, Det. Nunez maintained that he never came into contact with § 87(2)(b)'s neck or windpipe, and believed that the video footage only showed him in contact with § 87(2)(b)'s upper torso for a few seconds. Det. Nunez denied using a chokehold on § 87(2)(b) and knew it was prohibited by the Department. He also added that a chokehold requires the use of both hands by definition, as opposed to the one-handed maneuver he used on § 87(2)(b). Noting that § 87(2)(b) was able to vocalize at the time, Det. Nunez denied doing anything to restrict his breathing. (BR14)

Det. Nunez warned § 87(2)(b) that he would tase him. When he continued to resist, he discharged the taser against his back. However, the prongs failed to latch onto § 87(2)(b) either because they bounced off his body or because he pried them off. Seemingly unaffected, § 87(2)(b) now advanced and tried to grab the taser, but Det. Nunez prevented him from doing so by

holding him back. From this point on, as the struggle moved from the front to the rear of the lot, § 87(2)(b) pushed, punched, and kicked at both officers; in the process, he managed to bite Det. Nunez's left index finger at some point, and struck PO Pierce at least once. § 87(2)(b) also kept reaching for the taser, which Det. Nunez – as he grappled with § 87(2)(b) to “hold him away” – could not holster. Det. Nunez acknowledged tasing § 87(2)(b) in drive stun mode as they struggled in the rear. He could not approximate how many times he fired the weapon, but said he did so “every time § 87(2)(b) grabbed it.” Det. Nunez believed that he made contact “everywhere” on § 87(2)(b)'s body, but could not approximate the distribution and frequency of the contact. Though the taser had no effect on § 87(2)(b) – who appeared to be under the influence, at least of alcohol – Det. Nunez was ultimately able to take him to the ground as backup officers arrived. (BR14)

PO Pierce § 87(2)(g) further stated that she was punched by § 87(2)(b) on the left side of her head at some point during the rear lot struggle, but could not say exactly when this occurred and did not know if he struck her with a closed fist. (BR15)

Det. Nunez stated that he received medical treatment for the bite wound and PO Pierce said she was treated for the abrasions she sustained. (BR14-BR15) The LOD reports reflect roughly the same injuries. (BR19-BR20) The officers' TRIs and memo books are also consistent with the statements they provided. (BR21- BR22, BR27-BR28) IAB photographs of Det. Nunez, captioned as “middle finger bite” and “nail scratches on right forearm,” show bruising to his finger and scratches to his right forearm. (BR23) There is no photo documentation of PO Pierce's injuries. The arrest report is consistent with Det. Nunez's account of the incident, stating that: § 87(2)(b) was approached and asked for ID for the disorderly conduct. § 87(2)(b) said he had no ID and then [Det. Nunez] tried to control § 87(2)(b) while he was affecting a lawful arrest when § 87(2)(b) began to struggle [...]” § 87(2)(b) was charged with assault, disorderly conduct, obstructing governmental administration, and resisting arrest. Neither § 87(2)(b) nor § 87(2)(b) were charged or cited for the noise violation. (BR17, BR40)

§ 87(2)(b) was removed to the hospital after his arrest. The medical records documented no obvious trauma. (BR23)

IAB's taser report, generated with data extracted from Det. Nunez's weapon, shows the following: 14 cycles were discharged in total; 13 of these cycles were each sustained for the full five-second maximum; the first deployment occurred at 23:53:25 and the last at 23:56:26; and the majority of the discharges occurred at two specific intervals – between 23:53:56 and 23:54:55 (six trigger pulls at five-second cycles each) and between 23:56:01 and 23:56:26 (four trigger pulls at five-second cycles each). The report does not reveal how many times the taser made contact with § 87(2)(b) (BR26)

Per Patrol Guide (P.G.) procedure 221-01, all use of force must be objectively reasonable under the circumstances. Per P.G. 221-01, officers also required to “use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force.” P.G. 221-01 also prohibits the use of a chokehold, which “shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.” (BR30)

Per P.G. procedure 221-08, a conducted electrical weapon (CEW) “should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or [others]...” Officers must always “assess [the] situation and determine if the use of a CEW is appropriate” and relevant factors include “the nature and severity of the crime/circumstances” and those of the actions taken by the civilian. (BR31)

Per P.G. 214-23, regarding unnecessary noise violations, officers should “attempt to correct the condition by warning [the] violator,” and serve a summons returnable to Criminal Court “if unable to correct condition...” (BR32)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation S: Detective Fabio Nunez used a second chokehold against § 87(2)(b)**

§ 87(2)(b) alleged that while he was against a vehicle at the rear of the lot, Det. Nunez once again wrapped his forearm around his neck, exactly as he had done earlier. § 87(2)(b) was held in this position again for approximately 20 seconds, until about five responding officers arrived and pulled him to the ground. (BR05)

Det. Nunez denied using a chokehold on § 87(2)(b) at any point during the latter part of the struggle, and said he did not attempt to re-apply the maneuver he used at the front of the lot. (BR14) PO Pierce's stated the same. (BR15)

Video 3 (page 3), between 11:50:00 - 11:50:15, shows Det. Nunez appearing to hold § 87(2)(b) in a manner resembling his earlier chokehold, but the view is obstructed and the points of contact unclear. (See BR05 for higher quality footage)

§ 87(2)(g)

**Allegation T – Force: Officers used physical force against § 87(2)(b)**

**Allegation U – Force: Police Officer Robert Velsor used physical force against § 87(2)(b)**

**Allegation V – Discourtesy: An officer spoke discourteously to § 87(2)(b)**

As video 3 (page 3) shows, a large number of the responding officers were involved in restraining § 87(2)(b) on the ground. Additionally, PO Velsor can be seen pushing § 87(2)(b) against a vehicle as she attempts to become involve herself in the arrest. And at 23:54:10, an officer can be heard shouting "shut the fuck up!" However, the combined footage shows at least five officers attempting to restrain a screaming § 87(2)(b) either shoulder-to-shoulder or on top of each other; with everyone yelling in unison, individual voices cannot be distinguished from the combined tumult to identify the speaker using profanity. (BR11)

§ 87(2)(b) could not describe the force used to restrain him and did not allege any discourteous language. (BR04)

Det. Nunez, PO Pierce, and PO Velsor all said that they did not use any profanity toward § 87(2)(b) and did not recall others doing so. (BR14-BR16)

Regarding his actions on § 87(2)(b) PO Velsor stated that she was attempting at the time to involve herself with the arrest underway, and came to push him when he tried to hold her back. Failing to comply with his repeated commands to stay back, PO Velsor eventually got his handcuffs out to arrest § 87(2)(b) for disorderly conduct. However, when he tried to handcuff her, § 87(2)(b) started flailing her arms, prompting PO Velsor to push her against the vehicle to restrain her quickly. (BR16)



§ 87(2)(g)

[REDACTED]

### **Civilian and Officer CCRB Histories**

- § 87(2)(b) and § 87(2)(b) have not been a party to any prior CCRB complaints.
- Det. Nunez has been a member of service for 18 years and has been a subject in 13 CCRB complaints and 25 allegations, of which one was substantiated:
  - 200504839 involved a substantiated allegation of a vehicle search against Det. Nunez. The Board recommended Charges and the NYPD imposed Instructions.
  - § 87(2)(g)
    - 200907531 involved an unsubstantiated chokehold allegation;
    - 201808324, an open case under investigation, involves a chokehold allegation (the use of force in question is video documented).
- PO Pierce has been a member of service for six years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
- PO Velsor has been a member of service for five years and has been a subject in one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

This case was not suitable for mediation. Notice of claim results are pending. Per the Office of Court Administration, § 87(2)(b) has not been convicted of any criminal offenses in the last ten years, § 87(2)(b)

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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